ER SIEW KENG

v.

ENG THIANG LAI

HIGH COURT MALAYA, JOHOR BAHRU
ABU MANSOR ALI J
[CIVIL SUIT NO. 25-526 OF 1987]
4 DECEMBER 1989

TORT: *Negligence - Accident between motorcyclist and motorist - Injuries sustained - Fracture of right radius and ulna - Fracture of the shaft of the right femur - Complete disruption of the right knee - Comminuted compound fracture of the right tibia and fibula - Pre-trial loss of earnings - Loss of future earnings - Assessment of damages.*

This was a claim for damages for negligence. There was an accident between the plaintiff, motorcyclist who was knocked down by a motorist, the defendant. The defendant, gave evidence and his evidence confirmed the evidence of the plaintiff.

As a result of the accident, the plaintiff suffered a fracture of the right radius and ulna, a fracture of the shaft of the right femur, a complete disruption of the right knee and a comminuted compound fracture of the right tibia and fibula.

The plaintiff confirmed that the plate and screws in her right arm are still there and so are they in her right tibia and femur. All these had to be removed by surgery which she intended to undergo. Further she said that she had been having an infection for the past 3 years which only a surgery would help to eradicate.

On the date of accident she was 21 years of age. She sustained injuries and at the date of the hearing she said she still suffers pain in her right arm and right leg, her right leg was still swollen.

Held:

The defendant was 100% liable for negligence and damages were awarded to the plaintiff as follows:

[1] General damages for pain and suffering and loss of amenities - RM45,000
with interest at 8% (excluding the loss of future earnings sums)
Pre-trial loss of earnings
Plaintiff earning RM300 p.m. x 43 months - RM12,900

[2] Loss of future earnings.
-12.5 x 12 x RM300 p.m. = RM45,000

[3] Special damages
Agreed - Police report - Search Fee - RM 10
Fee for Medical Report - RM 100
Travelling expenses and subsistence - RM 2,520
Medical Expenses - RM19,374.40
Future Medical
expenses for
further operation
to have plate removed - RM 8,000
for both

[Order accordingly.]

Cases referred to:
Ngooi Ku Siong & Anor. v. Aidi Abdullah [1984] 1 CLJ (Rep) 294
Ho Kiat v. Ngo Siong Hong March 1986 MLJ xcii
Victor Alphonse Sebastian & Ors. v. Lee Ah Leek [1987] Note xxi
N. Vijaya Kumar s/o Narayanasamy v. Voon Chen Lim [1989] 3 MLJ 255

For the plaintiff - Reginald Vallipuram; M/s. Reginald Vallipuram & Co.
For the defendant - Liak Teng Liang; M/s. H.H. Long & Co.

JUDGMENT

Abu Mansor Ali J:

On 21 February 1986 Er Siew Keng (PW1) was riding on motor-cycle JL 7969 along Jalan Paloh - Yong Peng from the direction of Paloh towards Yong Peng. At the 5 milestone of that road she was involved in a collision with motor-car JAP 7201 driven by the defendant travelling from the opposite direction.

PW1 said she was riding on the left side of the road about more than one foot from the left edge and 4 to 5 feet from the white centre line. She saw the said car approaching and suddenly the on-coming car encroached into her path of the road. She tried to avoid by swerving to the left but before she could do so she was knocked down and thrown into the bushes nearby. She was unable to stand up. She shouted for help and was unconscious after that. Help came and she was eventually brought to the Johor Specialist Hospital. On 5 April 1986 she lodged a police report concerning the accident.

On the date of accident she was 21 years of age. She sustained injuries and at the date of the hearing she said she still suffers pain in her right arm and right leg, her right leg was still swollen.

The injuries she received is as per p. 3 of BDA. They are as follows:

1. A fracture of the right radius and ulna.
2. A fracture of the shaft of the right femur.
3. Complete disruption of the right knee.
4. A comminuted compound fracture of the right tibia and fibula.

She confirmed that the plate and screws in her right arm are still there and so are they in her right tibia and femur. All these had to be removed by surgery which she intends to undergo. She said she had been having infection for the past 3 years which only a surgery would help to eradicate.

At the time of the accident, PW1 was a rubber tapper. She went to primary 6 in a Chinese School. Before the accident, she had been tapping for 4 years and she helped in household chores. After the accident, she could not go back to her work, she could not squat or stand a long time on her legs.

She was also unable to get work anywhere though she tried from nearby shops but she had been turned down because of her condition being unable to carry heavy things.

She incurred a bill of RM19,374.40 from the Johor Specialist Centre. PW1 said it was more than that as there were follow up treatment.

PW1 had aged parents who are supporting her. As to her chances of marriage, PW1 said before the accident, she had a boyfriend but after the accident, he had been avoiding her.

The defendant gave evidence and defendant's evidence confirmed the evidence of PW1. He said he was then in the act of overtaking a car. While he was in the process of overtaking, he collided with an on-coming motor-cyclist who was riding her motor-cycle about one foot from the left edge of the road.

I find on the evidence before me the defendant is 100% to blame for this accident. I give judgment for the plaintiff based on 100% liability as follows:

A 1. Special Damages as per bundle BP 6 the following items have been agreed:

(a) Police report fee at RM8; (b) RIMV search fee at RM10; (d) fee for medical report at RM100 and (e) travelling expenses and subsistence as RM2,520.

2. I make the award of RM19,374.40 for medical expenses at Specialist Medical Centre.

3. As for future medical expenses for further operation to have plate removed I make an award of RM8,000 for both.

It is an expense most necessary to help and alleviate the infection and the pain and suffering undergone by a person so young in age whose chances of marriage might have been completely destroyed by the injuries she received as a result of the accident.

B. General damages for pain and suffering and loss of amenities. For the various items of injury the plaintiff's Counsel submitted that I should make the award as follows. He suggested:

(i) Fracture of right radius and ulna, I may award RM15,000 for fracture of the right radius and ulna following *Ngooi Ku Siong & Anor. v. Aidi Abdullah* [1984] 1 CLJ (Rep) 294.

(ii) Fracture of midshaft of right femur I may award RM8,500.

(iii) Comminuted fracture of the right tibia and fibula resulting in 1.5 cm shortening of right lower limb, for, the limb and alignment between the right knee and ankle joints having been lost I may award RM23,000.

(iv) For disruption of the right knee it has been suggested I award RM9,000 following *Ho Kiat v. Ngo Siong Hong March* 1986 MLJ xcii.

(v) Ankle injury, I may award RM8,000. I have perused and considered Counsel's written submission in particular plaintiff's pp. 13-16 of his written submission and I agree that a reasonable sum for a global figure for all the injuries sustained by PW1 to the whole of her leg would be RM47,000 less RM2,000 i.e. RM45,000 as more serious than in the case of *Victor Alphonse Sebastian & Ors. v. Lee Ah Leek* [1987] Note xxi where Mustapha J awarded only RM33,000 involving only one fracture and laceration. For item (i) for right radius and ulna I give an award of RM15,000 for that item.

(vi) Scars.

Under this item I would award RM14,000 for all her ugly scars.

(vii) Osteoarthritis.

I award RM2,500 for this.

As for pre-trial loss of earnings PW1's earning per month has been agreed at RM300 for 43 months it is RM12,900.

Future loss of earnings. I agree with the plaintiff's Counsel's submission substantially on pp. 18 and 19 of his written submission and I award the future loss of earnings as 12.5 x 12 x RM300 per month = RM45,000 following the case of *N. Vijaya Kumar s/o Narayanasamy v. Voon Chen Lim* [1989] 3 MLJ at 255.

For the above sums I also awarded the usual 4% per annum on the special damages and 8% on the general damages (excluding the loss of future earning sums) with costs to be taxed or agreed. I enter judgment for the plaintiff accordingly.

Also found at [1990] 1 CLJ 488